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# In the Supreme Court

of the United States

OCTOBER TERM 1971

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No. 71-900

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UNION OIL COMPANY OF CALIFORNIA,  
a corporation,

*Petitioner,*

v.

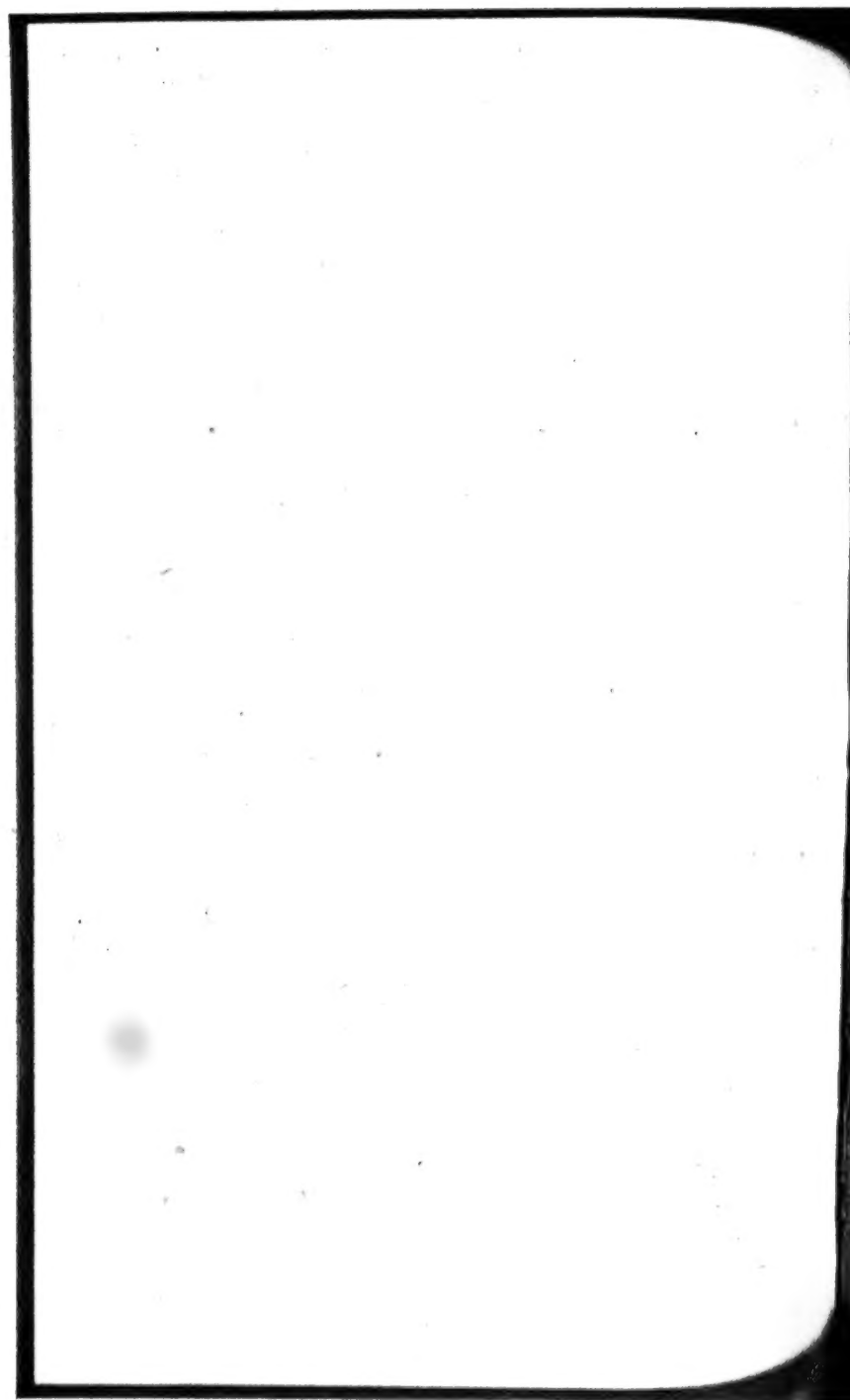
The Tugboat SAN JACINTO and the Barge  
OLIVER J. OLSON III, their engines, boilers,  
tackle, apparel and furniture; and STAR &  
CRESCENT TOWBOAT COMPANY,  
a corporation, and OLIVER J. OLSON &  
COMPANY, a corporation,

*Respondents.*

## SUPPLEMENTAL BRIEF OF RESPONDENTS

ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ERSKINE B. WOOD  
1505 Standard Plaza  
Portland, Oregon 97204  
*Counsel for Respondents*



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**SUPPLEMENTAL BRIEF OF RESPONDENTS**

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**I**

Petitioner has recently filed a "Supplementary Reply Brief for the Petitioner" which raises entirely new matter: the draft text for proposed revision of the International Rules of the Road. Therefore, it seems appropriate for respondents to comment briefly upon this draft.

1. The new material referred to in petitioner's brief is merely a draft, or working paper, prepared by a subcommittee, of the Maritime Safety Committee, of the Intergovernmental Maritime Consultive Organization. Before proposed revisions can have any validity or binding effect on United States vessels, the following procedures would have to be accomplished:

(a) Approval of the Subcommittee's draft by the Maritime Safety Committee; (b) Approval of the Maritime Safety Committee's action by I.M.C.O.; (c) Ratification by nations owning 75% of the world's seagoing tonnage; (d) Passage of a period of 12 months after such ratification; (e) State Department recommendation of the convention to the President; (f) Ratification with the advice and consent of the United States Senate.<sup>1</sup>

2. Certainly this draft text of revision is not material to the present collision which occurred 5 years ago (1967) upon inland waters of the United States. The present case is governed by the Congressionally enacted Article 16a of the Inland Rules (33 U.S.C. § 192) which has long been in force and still is, together with the well established judicial interpretations of Article 16a.

3. But, most important, if the draft text revisions are finally adopted, they will reinforce the "half-

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<sup>1</sup> See proceedings of the Marine Safety Council, April, 1972, Department of Transportation, Vol. 29, No. 4, pp. 70-71.

distance rule" as a standard of speed for vessels meeting in a close quarter situation in fog.

Respondent's brief states that "these proposals thoroughly repudiate rigid standards such as the half-distance rule . . . ." Pet. Supp. Br., p. 5. This is completely untrue.

On the contrary, the language of the proposed revisions sets stricter standards for reduced speed in fog than under the present Article 16a.

Under Article 16a, every vessel in restricted visibility is required to go at a *moderate speed*. 33 U.S.C. § 192. Proposed revision, Rule 25, requires every vessel in restricted visibility to proceed at a *safe speed*. "Safe speed" is stricter and more definite than "moderate speed."

Furthermore, the proposed text defines "safe speed" as "a speed at which the vessel can take proper and effective action at any time to avoid collision and *can be stopped within a distance appropriate* in the prevailing circumstances and conditions." Rule 5(b). The words "can be stopped" are not included in the present rules, but the courts by judicial interpretation have imposed the requirement that the vessel *can be stopped* before colliding with another vessel which comes into sight (the half-distance rule). Thus, the text of the proposed revisions, by including the specific language "can be stopped" is practically a codification of the half-distance rule that now exists through interpretation. Undoubtedly the words "appropriate distance" would still have to be interpreted

by the courts, but it seems reasonable to assume they would continue to apply the well established rule, so many times announced by this Court, and the English courts, that the vessel must be able to stop "before colliding with another vessel which comes into sight." See Resp. Br. pp. 8-18.

4. It may also be noted that draft text Rule 26(b) requires any vessel meeting another in a close quarter situation (and obviously vessels meeting to pass in a narrow channel are in a close quarter situation) shall "reduce her speed to bare steerageway and if necessary take all her way off." As stated in the Court of Appeals decision, and as pointed out in respondent's principal brief, p. 22-23, SANTA MARIA did not reduce her speed to bare steerageway.

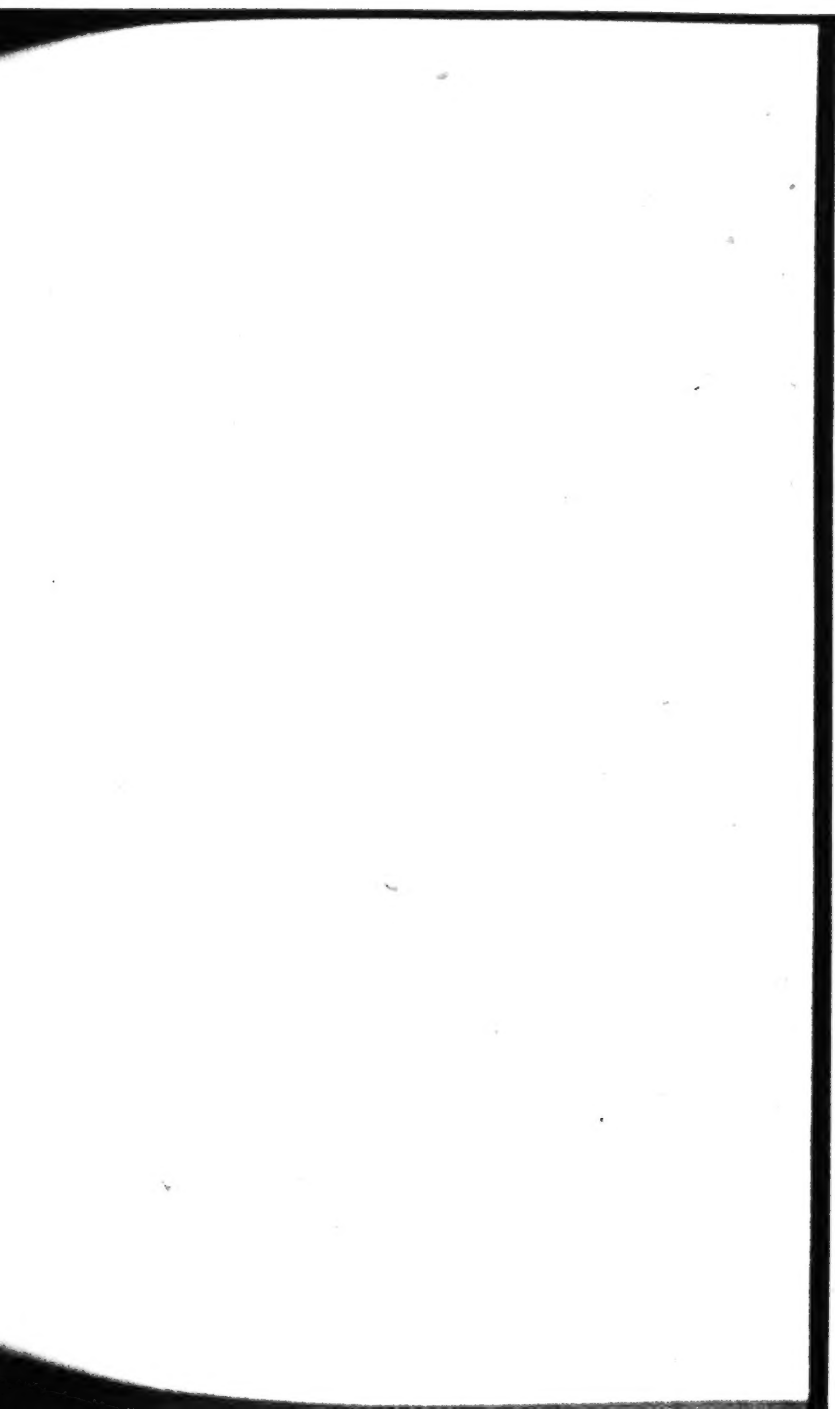
## II

*Flood v. Kuhn*, — U.S. —, 32 L. Ed. 2d 728 (June 19, 1972), decided since the printing of Respondents' Brief, supports respondents' position that, if there is to be any change in the long established rule of equal division of damages, it should only be accomplished by legislation. (See Resp. Br. pp. 26-33).

Respectfully submitted,

ERSKINE B. WOOD  
1505 Standard Plaza  
Portland, Oregon 97204  
Counsel for Respondents

October 4, 1972



I hereby certify that I served the foregoing

on

attorney for on the day of

19, by mailing to him three true and correct copies thereof, certified by me as such. I further certify that said copies were placed in a sealed envelope addressed to the said attorney at

which is his regular office address, or his address as last given by him on a document which he has filed in the within entitled cause and served on me: said sealed envelope was then deposited in the United States post office at

mentioned, with the postage thereon fully paid.

Attorney for

Service of the within

is hereby accepted in Oregon, this

day of, 19

by receiving three copies thereof.

Attorney for



